

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION**

UNITED STATES OF AMERICA

§
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§
§

v.

CRIMINAL NO. 4:05CR140.1

KEVIN FITZGERALD CUBA

**REPORT AND RECOMMENDATION
OF UNITED STATES MAGISTRATE JUDGE**

Pending before the Court is the request for revocation of Defendant's supervised release.

After the District Court referred the matter to this Court for a report and recommendation, the Court conducted a hearing on February 24, 2014, to determine whether Defendant violated his supervised release. Defendant was represented by Robert Arrambide. The Government was represented by Heather Rattan.

On April 27, 2006, Defendant was sentenced by the Honorable Richard A. Schell, United States District Judge, to a sentence of 78 months imprisonment followed by a three-year term of supervised release for the offense of Possession of a Firearm by a Convicted Felon. Defendant began his term of supervision on April 8, 2011.

On November 15, 2013, the U.S. Probation Officer filed a Petition for Warrant or Summons for Offender Under Supervision (the "Petition") (Dkt. 33). The Petition asserts that Defendant violated the following conditions of supervision: (1) Defendant shall not commit another federal, state or local crime; (2) Defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute or administer any controlled substance, or any paraphernalia related to any

controlled substances, except as prescribed by a physician; and (3) Defendant shall participate in a program of testing and treatment for drug and alcohol abuse, under the guidance and direction of the U.S. Probation Office, until such time as defendant is released from the program by the probation officer.

The Petition alleges that Defendant committed the following violations: (1) On July 21, 2013, Defendant was arrested in Red River County for allegedly committing the offense of Assault Family Violence, a Class A Misdemeanor. As of this writing, the charge remains pending; (2) Defendant admitted to using marijuana on February 13, 2013. In addition, Defendant submitted positive urine specimens for marijuana on August 24, and September 24, 2013. On October 7, 2013, Defendant submitted a positive urine specimen for cocaine; and (3) Defendant failed to report for drug testing on November 7, 2013.

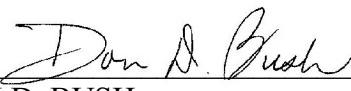
At the hearing, Defendant entered a plea of true to the alleged violations that he used marijuana on February 13, 2013, that he submitted positive urine specimens for marijuana on August 24, and September 24, 2013, that he submitted a positive urine specimen for cocaine on October 7, 2013 and that he failed to report for drug testing on November 7, 2013.¹ Defendant waived his right to allocute before the district judge and his right to object to the report and recommendation of this Court. The Court finds that Defendant has violated the terms of his supervised release and that his supervised release should be revoked.

¹He did not enter any plea as to the allegations regarding the pending case in Red River County.

RECOMMENDATION

Pursuant to the Sentencing Reform Act of 1984 and having considered the arguments presented at the February 24, 2014 hearing, the Court recommends that Defendant be committed to the custody of the Bureau of Prisons to be imprisoned for a term of twenty-one (21) months, with no supervised release to follow. The Court further recommends that Defendant's term of imprisonment be carried out in El Reno FCI, if appropriate.

SIGNED this 6th day of March, 2014.



DON D. BUSH
UNITED STATES MAGISTRATE JUDGE